



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: :
LUBDA et al. : Examiner: L. Roche
Serial No.: 09/446,298 : Group Art Unit: 1771
Filed: June 12, 2000 :
Title: HOLDING DEVICE FOR MONOLITHIC SORBENTS

RESPONSE TO REQUIREMENT FOR RESTRICTION

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed May 6, 2002, and the restriction requirement set forth therein, Applicants hereby elect Group I, claims 1, 2 and 4, drawn to an encased monolithic sorbent. The election is made with traverse for the reasons set forth below. Applicants reserve the right to file one of more divisional applications directed to the non-elected subject matter.

Applicants do not believe that the grounds for restriction set forth in the Office Action are proper. It is alleged with no explanation and no opportunity for rebuttal or amendment that WO 94/19687 anticipates or renders obvious the claimed invention and that this is the reason for the restriction. M.P.E.P. §806.05(i) sets forth a practice whereby, restriction may be made only after a determination has been made that the product is not patentable. Without any full explanation of the rejection and chance for response by applicants, it is strongly urged that there cannot have already been made a determination that the product is not patentable. Further, even if not currently patentable, applicants should have the opportunity to amend the claims to make them patentable, in which case the restriction would no longer be proper. It should be noted that

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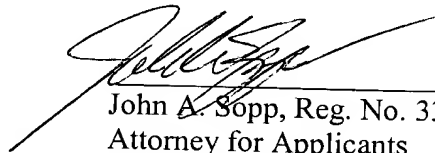
applicants certainly do not concede the allegation of unpatentability of the product. For this reason alone, i.e., the restriction improperly being made on a premature allegation of unpatentability of the product, the restriction should be withdrawn.

Furthermore, the claims (when properly analyzed for restriction) are not restrictable. Applicants' claims set forth a product (the elected encased monolithic sorbent), a method of using that product (claim 3) and a method of preparing that product (claims 5-15). The method of making is clearly directed to the same product of Group I. Applicants will make claims 5-15 dependent upon claim 1, if that is necessary, but it should be evident that, de facto, that is the case. In this situation, 37 C.F.R. §1.141(b) sets forth that the product, a method of using it and a method of making it should be joined in a single application and not restricted. It is noted that the C.F.R. rules take precedence over the MPEP where a conflict exists, which may be the case here. For this independent basis, it is urged that the restriction requirement should be withdrawn.

Favorable action is earnestly solicited.

The Commissioner is hereby authorized to charge any fees associated with this response or credit any overpayment to Deposit Account No. 13-3402.

Respectfully submitted,



John A. Sopp, Reg. No. 33,103
Attorney for Applicants
MILLEN, WHITE, ZELANO & BRANIGAN, P.C.
Arlington Courthouse Plaza 1
2200 Clarendon Boulevard, Suite 1400
Arlington, VA 22201
Direct Dial: 703-812-5315
Facsimile: 703-243-6410
Email: sopp@mwzb.com